

DongHong.NCS

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**FILED**  
DISTRICT COURT OF GUAM  
JUN 20 2007  
MARY L.M. MORAN  
CLERK OF COURT

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF GUAM**

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.  
  
DONG PYO HONG,  
  
Defendant.

CRIMINAL CASE NO. 06-00058

**UNITED STATES NOTICE  
CONCERNING SENTENCING**

COMES NOW the United States and hereby advises this Honorable Court that it believes that the crime for which defendant is to be sentenced, Fraud in Connection with Identification Documents, in violation of 18 U.S.C. 1028(a)(6), is a class A misdemeanor, rather than a felony.

The operative facts of this case are that defendant, who had entered as a tourist and remained illegally in the United States, solicited Ina Lee to help him obtain a Guam driver's license. Lee was doing this for many people, using forged letters purportedly from the Internal Revenue Service assigning Taxpayer Identification Numbers (TIN). Lee filed an application for a Guam driver's license with a confederate in the Motor Vehicle Division, using TIN 943-01-0203 as defendant's means of identification. The TIN was false and does not belong to anyone. A Guam driver's license was issued to defendant using this false authentication feature.

The penalty section of this statute, 1028(b), is rather convoluted. Section 1028(b)(2) provides a five-year penalty for the "production, transfer, or use of a means of identification, an

1 identification document, authentication feature, or false identification document.” This section also  
2 provides a wide range of penalties which are not applicable here, but which are all directed at the  
3 “production, transfer, or use.” Section 1028(b)(6) is a catch-all provision: the penalty for “any other  
4 case” is a one-year misdemeanor.

5 Although defendant, through Ina Lee, “used” the IRS TIN letter, defendant has been charged  
6 under § 1028(a)(6), which concerns knowingly possessing an authentication feature. Given that the  
7 charge is under this section, the government believes that the penalty imposed must be pursuant to  
8 § 1028(b)(6), that is, a misdemeanor.

9 Respectfully submitted this 20th day of June, 2007.

10 LEONARDO M. RAPADAS  
11 United States Attorney  
12 Districts of Guam and NMI

13 By:

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